

FILED

MAR 18 2003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

SAMUEL L. KAY, CLERK
U. S. District & Bankruptcy Co.
Southern District of West Virg

Kelvin Andre Spotts

05613-088

(Enter above the full name of the plaintiff
or plaintiffs in this action).

(Inmate Reg.# of each Plaintiff)

VERSUS

CIVIL ACTION NO. 5:03-0231
(Number to be assigned by Court)

Robert C. Chambers (personal capacity)

Maurice Taylor (personal capacity)

* Personal Capacity Troy Williamson : Bureau of Prisons

* Personal Capacity Michael Kelle : Department of Justice

(Enter above the full name of the defendant
or defendants in this action).

COMPLAINT

I. Previous Lawsuits

- A. Have you begun other lawsuits in state or federal court
dealing with the same facts involved in this action or
otherwise relating to your imprisonment?

Yes

☒

No

☐

- B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit

Plaintiffs: Kelvin Andree Spotts

Defendants: TODD OWEN McDaniel ET AL.
J.C. LEE ET AL.

2. Court (if federal court, name the district; if state court, name the county):

Cabell County Circuit Court

3. Docket Number: 02-C-958

4. Name of judge to whom case was assigned:

DAVID M. PANCAKE

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

Still Pending

6. Approximate date of filing lawsuit: Nov 2002, 2

7. Approximate date of disposition: N/A

II. Place of Present Confinement: Beckley F.C.I.

A. Is there a prisoner grievance procedure in this institution?

Yes ✓ No

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes ✓ No

C. If your answer is YES:

1. What steps did you take? Filed BP 8, 9, 10

2. What was the result? DENIED

D. If your answer is NO, explain why not: N/A

III. Parties

(In item A below, place your name and inmate registration number in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff: Kelvin Andre Spotts 05613-08

Address: P.O. Box 350 Beaver WA 2581

B. Additional Plaintiffs and Address: N/A

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

- C. Defendant Robert C. Chambers
 is employed as District Court Judge
 at Southern District W. VA (Huntington Div)
- D. Additional defendants: Troy Williamson Warden
Michael Kelke A.U.S.A. Maurice Taylor
Magistrate Judge. Department of Justice
Bureau Of Prisons

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheet if necessary).

See Attached Documents *NOTE that
this has been filed in pencil Because Plaintiff
is in Special Housing Unit where no pens
are allowed. Plus its like pulling a tooth
to be allowed to use law library typewriter
which is very out dated. So plaintiff ask

IV. Statement of Claim (continued):

For A Copy of Complaint be made ^{w/ Attachments}
Stamped + Filed and returned to
Plaintiff. Also plaintiff seeks
the opportunity to be Allowed to Amend
Complaint and File A typed and more
Detailed Complaint.

See Attached Pages For
Claim + Relief Sought.

V. RELIEF

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

See Attached:

V. Relief (continued)

VII. Counsel

- A. If someone other than a lawyer is assisting you in preparing this case, state the person's name:

N/A

- B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action?

Yes ☐

No ☒

If so, state the name(s) and address(es) of each lawyer contacted:

N/A

If not, state your reasons:

Can't use telephone
while in S.H.U.

- C. Have you previously had a lawyer representing you in a civil action in this court?

Yes ☐

No ☒

If so, state the lawyer's name and address:

N/A

Signed this _____ day of March 2003

Kelvin Andee Spotts
05613-088

Signature of Plaintiff or Plaintiffs

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(Date)

Signature of Movant/Plaintiff

Signature of Attorney
(if any)

STATEMENT OF CLAIMS WRONGFUL ACTS OF MISCONDUCT

10

1) Robert C. Chambers went outside of his statutory duties and authority, by telling plaintiffs attorneys in open court on July 8th 1998 that plaintiff's claims for wanting to quash indictment were frivolous and without merit. When there was a Supreme Court ruling that were made for such motions. See *Russell v. United States*, 369 U.S. 749, 762, 82 S.Ct 1038, 8 L.Ed 2d 240 (1962) Also *Strione v. United States*, 361 U.S. 212 (1960). were in each of these cases proper objections were made in District Court. See Supreme Court made May 20th 2002, *United States v. Cotton*, No:1687, which speaks even more on the procedure in which to challenge the sufficiency of an indictment. His wrongful acts of misconduct impeded plaintiffs legal defense, and denied plaintiff equal protection under the law, denied plaintiff effective assistance of counsel, this also violating plaintiffs 5th, 6th and 8th amendment rights, subjecting plaintiff to cruel excessive and unusual punishment. All in Direct violation of plaintiff's "Liberty Interest". Plaintiff demands strict reading of his constitutional rights.

2) Maurice Taylor, went outside of his statutory authority when he allowed a West Virginia State Citizen file a criminal complaint under Federal Statute's against plaintiff who is also a Citizen of the same State of W.Va. For the definition's of a State Citizen does not fall under the protection of any of the Federal Statutes enacted by Congress.

3) Troy Williamson/Warden and/or Joyce Conley/Warden's at Beckley F.C.I. to be sued in their individual capacities. The plaintiff has previously filed grievance's by means of institutional policies BP8,9, and also 10s, requesting that this institution or B.O.P. file a 3582 motion to United States District Court for the Southern District of West Virginia (Huntington Division)

The plaintiff has pointed out that his conviction and his incarceration here at Beckley F.C.I. was illegal and unconstitutional.

The plaintiff unlike other inmate here has preserved his right's to challenge the sufficiency of his indictment and demand equal protection under the law by way of Russell v. United States 369 U.S. 749, 762, 82 S.Ct. 1038, 8 LEd2d 240 (1962), were first the indictment must contain "the essential elements of the offense intended to be charged so that it sufficiently apprises the defendant of what he must be prepared to meet". This meaning that the District Court did not have subject matter jurisdiction to impose such an illegal and unconstitutional sentence along with it's judgment and commitment order that placed me under your supervision or at your facility.

See United States v. Sanders, Cite ---F3d---(4th Cir2001), where under Bousley analysis Sanders could not show cause to explain his failure to raise Apprendi v. New Jersey Claim on Direct Appeal. But in plaintiff's instant case he has preserved his right's to challenge the sufficiency of the indictment on collateral review, and that the comment's made by Judge Robert C. Chambers is enough to show cause which means some type of impediment, an outside force that has impeded plaintiff's legal defense.

Although the plaintiff does not need Apprendi v. New Jersey to be retroactive to his case as once thought, See United States v. Cotton, No:1687 argued April 13th, 2002 after plaintiff filed BPS and 9's placing this institution on the B.O.P. on "Notice" case was decided on May 20th, 2002. This case speaks even more voluminous about how to make a timely assertive challenge to the sufficiency of an indictment far in United States v. Russell, and Strickland v. United States, 361 U.S. 212 (1962) each of these cases made proper objections in District Court to the Sufficiency of the indictment as did the plaintiff. The plaintiff also preserved his motion filed by his court appointed counsel in District Court, so that he could appeal the issue raised that was meritorious.

Plaintiff's claim of ineffective counsel will satisfy the procedural default which allow plaintiff to relitigate his position under 28 U.S.C 2255 and Demand Equal Protection of the Law, plus it also allows the plaintiff protect his "Liberty Interest". Cause the Russell Case was decide way back in 1962 and can be applied to plaintiff's situation for collateral review. plus

Statement of Claims Wrongful Act of Misconduct

1) Robert C. Chambers went outside of his Statutory Duties and Authority. By telling Plaintiff Attorneys In open court on July 8th 1998 that Plaintiff Claims for wanting to Quash Indictment WAS Frivolous And with out merit. When there was Supreme Court Ruling that were made for such motions See Russell v. United States, 369 U.S. 749, 762, 82 S.Ct 1038, 8 L.Ed2d 240 (1962) Also Steiner v. United States, 361 U.S. 212 (1960) Each case made proper objections in District Court. See Supreme Court Decision made MAY 20th 2002, United States v. Cotton, NO:1681 which speak more on the procedure in which to challenge the Sufficiency of An Indictment. His wrongful acts of Misconduct impeded Plaintiff Legal Defense, And Denied Plaintiff Equal of the Law Denied Plaintiff ~~with~~ Effective Assistance of Counsel Also violating Plaintiff 5th, 6th, And 8th Amendment Constitutional Rights Subject Plaintiff to Cruel Excess And Unusual Punishment. All in Direct

2) Markie Taylor
 Went out side of his Statutory
 Authority when he Allowed A
 W. VA State Citizen, file A Criminal
 Complaint Under Federal Statute's
 Against Plaintiff who is Also A
 Citizen of the same State W. VA.
 For the Definition of the State
 Citizen does not fall under
 the protection of any Federal
 Statutes All enacted by Congress.

3) Teoy Williamson / Warden's At Beethy
 Joyce Conley / F.C.I.
 Sued in their individual capacities
 Negligent in their Duties and
 Wrongful Acts of Misconduct

The Plaintiff has previously Filed
 By means of Institutional Policies P.P. 8,
 9 And 10s. Regarding that this institution
 or P.O. P. File A 3582 motion to
 United States District Court for the
 Southern District of West Virginia (Huntington
 Division)

The plaintiff unlike other inmates here has preserved his right to challenge the sufficiency of his indictment and demand Equal Protection of the Law by way of *Russell v United States*, 369 U.S. 749, 762, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962) where first, the indictment must contain "The essential Elements of the Offense intended to be charged so that it sufficiently apprises the defendant of what he must be prepared to meet." This meaning that the District Court did not have Subject Matter Jurisdiction to impose such an Illegal and unconstitutional Sentence that placed plaintiff under your Supervision or in your Facility.

See *United States v Sanders*, Cite --- F3d --- (4th Circuit 2001) were under Bousley Analysis Sanders could not show cause to explain his Failure to raise *Apprendice v. New Jersey* claim on direct appeal. But in plaintiff's instant case he has preserved his rights to challenge the

Although the plaintiff does not need *Apprendi v. New Jersey*, to be retroactive to his case as once thought, See *United States v. Cotton*, No: 1687 Argued April 13th 2002 After plaintiff Filed Bp 8, Placing Institution on Notice, Decided May 20th, 2002. This case speaks even more voluminous about how to make a timely Asseective Challenge to the Sufficiency of An Indictment. For In *United States v. Russell*, And *STRINE v. United States*, 361 U.S. 212 (1960) Each of these cases made proper objections in District Court to the Sufficiency of the Indictment, as did the plaintiff. The plaintiff also preserved his motion file by his court appointed Attorney in District Court so that he could appeal the issue raised.

Plaintiff's claim of Ineffective Counsel will satisfy the procedural default which allows plaintiff to re-litigate his position under 28 U.S.C. 2255 and demand equal protection of the law and it allows plaintiff to protect his liberty

Claim and has defaulted, in which you can contact him on this. It is urgent already.

Which now places me back to you the Defendant. The Defendant has neglected to protect my "Liberty Interest"

1) By Failing to file A Motion under 3582 to request the District Court or A.U.S.A. Michael Kellee to recall their Judgement And Commitment Order on Vacate Judgement and remove plaintiff off any and all B.O.P. Property or premises so that no incidents, accidents, or injuries would occur to plaintiff.

2) By placing plaintiff in a Unit with D.C. prisoners that are under Youth Act.

3) By not transferring this particular prisoner that was under the Youth Act to proper Security Level which would have been

And Fracturing Skull

- 5) By allowing Voss and prisoners to knock plaintiff unconscious causing plaintiff to have a concussion along with to snakes, one facial in forehead area, one knee skull caused by metal door.
- 6) plaintiff has receive a concussion and still has dizzy spells.
- 7) Plaintiff has received abuse by counselor and psychological and mental distress by various officers.
- 8) Plaintiff is now being placed on "Desist Therapy" in efforts to conceal incident, and remove plaintiff away from family and have one in the Area his home State.
- 9) Plaintiff has received unwaranted custody level points as a disguise

Relief Requested

Robert C. Chambers

- 1) Plaintiff seeks 4.5 million dollars for every year he's suffered psychological torment, stress, loss of family & physical injuries and loss of family life.

- 2) Plaintiff seeks twenty four million dollars for every year he's suffered psychological torment, stress, loss of family & physical injuries and loss of family life.

Plaintiff seeks 4.5 million dollars for every year he's suffered psychological torment, stress, loss of family & physical injuries and loss of family life.

Maurice Taylor

- 10) Plaintiff has been placed in special housing unit even after serving 240 time given by disciplinary hearing officers in the H. G. E. which was only 15 day. This has hindered plaintiff in conducting his family and securing same privileges as inmates that are incarcerated here constitutionally and legally.

- 11) Plaintiff has received inadequate medical & dental care

26) Plaintiff seeks punitive damages for 4.5 million dollars individually.

Troy Williamson Et Al
Loyle Conley

1) Plaintiff seeks damages in the amount of 1.5 million dollars for every year the S.O. 7 was raised for prisoner plaintiff and refused to file 3582 motion to District Court.

2) Plaintiff seeks punitive damages in the amount of 1.5 million dollars individually.

3) Plaintiff seek mental, physical, and psychological damages to be awarded in the amount of 1.5 million dollars.

4) Plaintiff seeks a 3582 motion

And ~~pleading~~ demand a hearing
 on the merits of Plaintiff's
 Flawed Indictment, And remove
 Plaintiff out of B.O.P. custody
 And returned back to South
 Central Regional Jail in Charleston
 W.Va., until such hearing
 is scheduled, or plaintiff
 seeks to be placed back
 on Beckley F.C.I. compound
 in a two man cell, away
 from abusive counselor, and
 returned back to his job
 Y.D. P.M. And paid for
 back wages. Also the return
 of all lost property or replace
 while plaintiff was in J.H.U.

5) Plaintiff seeks to have all
 custody level point that were
 added removed And for disciplinary
 transfer to be stopped.

6) Plaintiff seeks that none of
 all B.O.P. personnel seek
 reprisal for plaintiff's filing